

defendant's Simmons arguments as well as pointing out concessions the government has made in the past. Indeed, the Court has read the government's brief in Neal, which is found as pleading No. 5 in Neal v. United States, 3:12cv753, wherein it conceded, as follows:

In this case, Petitioner's most serious prior conviction is a Class H felony with a prior record level of II. Under North Carolina General Statutes § 15A-1340.17(c) and (d), the highest sentence Petitioner could have received for that conviction was 10 months. Under *Simmons*, then, that conviction was not for an offense punishable by more than one year in prison, and because Petitioner had no more serious prior convictions, he lacks a qualifying predicate conviction. While all parties understood at the time of Petitioner's conviction that he did have an adequate predicate conviction under *Harp* and *Jones*, *Simmons* now makes clear that he did not and, because Petitioner was convicted for conduct that we now understand is not criminal under § 922(g)(1), § 2255 relief is warranted.

Neal, 3:12cv753 (#5) at 5.

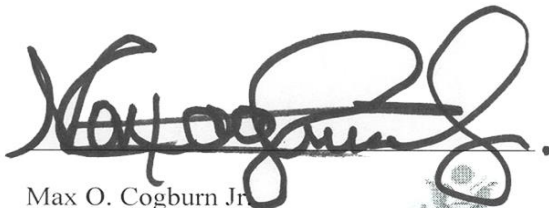
Despite the excellent briefing herein, the Court wants to hear oral arguments from both sides and determines that hearing the instant petition during the sentencing hearing in 3:18cr47 would be the appropriate time for that to occur. Indeed, if the government were to persuade the Court at that time that *Coram Nobis* relief was not appropriate in this '04 case, the Court could then move directly to a consideration of the Section 3553(a) factors in the '18 case, which would include consideration (under the protective Motion for Variance) of whether counting the earlier conviction creates a sentencing disparity with Neal.

The Court will, therefore, stay its consideration of the instant motion and direct the Clerk of Court to notice a hearing of this motion at the time of sentencing in 3:18cr47.

ORDER

IT IS, THEREFORE, ORDERED that consideration of defendant's Motion to Vacate Conviction and Petition for Writ of *Coram Nobis* is **STAYED**, and the Clerk of Court is instructed to Notice hearing of this motion at the time of sentencing in 3:18cr47.

Signed: June 1, 2018



Max O. Cogburn Jr.
United States District Judge